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Letter Opinion No. 62-1-L

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

REQUESTED BY: Mr. John A. Duncan, Superintendent  
Liquor Licenses and Control

OPINION BY: ROBERT W. PICKRELL, The Attorney General

QUESTION: May the State Liquor Department exercise jurisdiction over the importation of spirituous liquor which is stored in a U.S. bonded warehouse at Nogales, Arizona, and later transported by U.S. bonded cartmen to the Mexican border where it is delivered to a customer under the supervision of the U.S. Custom Service and under certification by the custom officer that it will be immediately exported into Mexico by the customer?

CONCLUSION: No.

United States bonded warehouse and United States bonded transportation is provided for in 19 U.S.C.A. §§1551 - 1565 and 26 U.S.C.A. §§5521 - 5523. Under Article 1, Section 8 of the U.S. Constitution, the United States Congress is given power "to regulate commerce with foreign nations, and among the several states \*\*\*." Article 1, Section 10 of the Constitution, provides that "no state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing it's inspection laws \*\*\*." 15 C.J.S. Commerce, §11, states:

" Broadly speaking, a state is without power to regulate, prohibit, prevent, restrict, obstruct, burden, impede, or interfere with, interstate or foreign commerce; and, this being true, power to control, regulate, or burden interstate commerce cannot, of course, be delegated by the state to, or exercised by, a municipal corporation, a state commission, or a state court. A state may not directly regulate, prohibit, or burden interstate or foreign commerce, or rights flowing proximately therefrom, even though, as noted infra §14, congress has not exercised its paramount power. The commerce clause of the federal constitution impliedly withholds (sic) from the several states the power to regulate commerce among them; it impliedly forbids the exercise of such power by them; and, of its own force, it restrains them from imposing direct burdens on interstate commerce."

It appears, then, that the crux of the present situation is whether or not the liquor ever leaves interstate and/or foreign commerce to become a part of the general mass of property

of the State of Arizona and thus subject to the regulation of the state.

In the case of McGoldrick v. Gulf Oil Corp., 309 U.S. 414, 84 L.Ed. 840, the United States Supreme Court considered the validity of a New York City sales tax on the sale of fuel oil. In that case crude oil had been shipped from a foreign company to a U.S. bonded warehouse in New York City where the fuel oil had been manufactured under the terms of the U.S. bonding statute. The fuel oil was then taken from the warehouse and delivered alongside foreign bound vessels at the New York City port. The oil was purchased for the ships' stores for consumption as fuel in propelling them in foreign commerce. It was contended by the city comptroller "that since the fuel oil came into existence in New York City and passed into the ultimate consumers hands in New York City," the tax was not invalid. The court rejected this argument, and in concluding that the tax must fail as an infringement on the congressional regulation of commerce, the court stated, as part of its reasoning:

"For the present purposes we may assume, without deciding, that had the crude oil not been imported in bond it would, upon its manufacture, have become a part of the common mass of property in the state and so would have lost its distinctive character as an import and its constitutional immunity as such from state taxation."

From this we are led to the conclusion that when the goods are shipped to a United States bonded warehouse and when they are transported by bonded cartmen they remain in the flow of commerce and therefore do not become subject to state regulation under existing statutes.

It is our opinion that under present statutes the State Liquor Department is without jurisdiction to regulate by taxes or under the licensing laws an import-export business operating completely under the United States Bonded Warehouse Statutes.

We do not by this opinion imply that the state legislature could not pass appropriate legislation that could regulate this type of commerce provided such legislation would not tend to prohibit or interfere with interstate commerce. That the state may regulate interstate liquor transportation to some degree has been established. It need not infringe the commerce clause of the federal constitution; Carter v. Virginia, 321 U.S.131, 88L.Ed. 605, 64 S.Ct. 464; see footnote 2, 93 L.Ed. 890. Such acts could not conflict with the Federal Bonded Warehouse Statutes, 19 U.S.C.A. 1551.

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